

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 851 of 1997

WITH

CIVIL APPLICATION No 2258 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

ORIENTAL INSURANCE CO LTD

Versus

DIWALIBEN JAYANTILAL

Appearance:

MR D.V. Shah for HJ BHATT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 13/11/97

ORAL JUDGEMENT

1. Admit. The respondent No.1 claimant is served.
Respondents No.2 and 3 - driver and owner of the vehicle insured with the appellant company are not required to be served.
2. This First Appeal is preferred by the Oriental Insurance Company Limited on being aggrieved by the

judgment and award passed by Motor Accident Claim Tribunal (Auxiliary) Junagadh in MACP No. 615 of 1988. By the said MACP, the claimant claimed compensation of Rs.1 lac for the injuries sustained by her in a vehicular accident which took place on 26th May, 1988 when she was engaged in relief work. At that time, the driver of Truck No. GRP 5911 came there driving the vehicle rashly and negligently and caused the various multiple injuries to the claimant.

3. It appears that the appellant company was not initially joined or impleaded as party to the proceedings. The accident took place admittedly on 26th May, 1988 while the Oriental Insurance Company Limited with whom the impugned vehicle was insured came to be impleaded as party to the proceeding on 8.5.1995 i.e. approximately after seven years from the date of the accident.

4. The Tribunal has by judgment and award dated 3rd of October, 1996 awarded the amount of Rs.54,100/- along with running interest at the rate of 15 per cent from the date of application till deposit and has further found that the amount is deposited within three months from the date of award, the interest shall be charged at 12 per cent per annum.

5. Mr. D.V.Shah who appears for the Insurance Company has raised only one objection before this court based on provisions of Section 149(2) of the Motor Vehicles Act, 1988. The said provision reads as under :

149.(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle --

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is issued, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

It was language of the provision that cast an obligation on the claimant to implead the insurer as party so that the Insurance Company may have the notice of the proceedings pending before the Tribunal from the vehicular accident. For the late joint of Insurance Company as back as 8th May, 1995, no reason is advanced but, admittedly, the Insurance Company has no notice of the fact of the vehicular accident and of the fact of petition having been filed for the purpose of compensation by the injured person. From the language of the section, prima facie, it appears that the Insurance Company cannot be saddled with liability prior to the period beginning from 8th May 1995. In the present case, the accident has occurred on 26th May, 1988 and,

therefore, the interest which is awarded at the rate of 15 per cent on the amount awarded cannot be awarded as against the Insurance Company. That amount of interest which is awarded is liable to be quashed and set aside in view of the specific statutory provision quoted hereinabove. The judgment and award of the Tribunal is, therefore, modified so as to read that opponents No. 1 to 3 shall be jointly and severally liable to pay a sum of Rs. 54,100/- but the Oriental Insurance Co. Ltd. Opponent No.3 shall not be liable to pay running interest at the rate of 15 per cent except from 8th of May, 1995. The rest of the award is maintained. The Appeal is partially allowed to the aforesaid extent. There shall be no order as to costs.

4. In view of the order passed in main matter, no order on Civil Application and the same is disposed of accordingly. Rule is discharged in the Civil Application.

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